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15 Attorneys for Plaintiffs/Judgment Creditors,
16 GIGANEWS, INC. and LIVEWIRE
SERVICES, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

21 GIGANEWS, INC., a Texas Corporation;
22 LIVEWIRE SERVICES, INC., a Nevada
Corporation,

Plaintiffs,

V.

25 PERFECT 10, INC., a California
26 Corporation; NORMAN ZADA, in
individual; and DOES 1-50, inclusive.

Defendants.

Case No.: 2:17-cv-05075-AB (JPR)

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

Pretrial Conf.: March 1, 2019
Time: 11:00 a.m.
Courtroom: 7B
Trial Date: March 26, 2019
Judge: Hon. André Birotte, Jr.

1 Pursuant to Rule 201(b) and Rule 201(c)(2) of the Federal Rules of Evidence,
 2 Plaintiffs Giganews, Inc. and Livewire Services, Inc. (“Plaintiffs”) respectfully
 3 request that the Court take judicial notice of certain documents in the public record.

4 Federal Rule of Civil Procedure 201 allows courts to take judicial notice of
 5 “adjudicative facts” (e.g. court records, pleadings, etc.) and other facts not subject
 6 to reasonable dispute that are either “generally known” in the community, or “can
 7 be accurately and readily determined from sources whose accuracy cannot be
 8 reasonably questioned.” Fed. R. Evid. 201(a), (b). The Court may also take
 9 judicial notice of its own records in other cases. *See United States v. Wilson*, 631
 10 F.2d 118, 119 (9th Cir. 1980). The orders and pleadings listed below were filed in
 11 the United States District Court for the Central District of California and the Ninth
 12 Circuit Court of Appeals. The fact that the documents were filed, the dates they
 13 were filed, and the Court orders they contain (where applicable) are undisputable
 14 matters of public record.

15 The Court may take judicial notice of a fact for trial on its own or at a party’s
 16 request. Fed. R. Evid. 201(c)(1) and (2). The Federal Rules of Evidence permit the
 17 Court to determine that a fact is sufficiently undisputed to be judicially noticed.
 18 Fed. R. Evid. 201(f). Once the Court takes notice, the Rule requires that the jury be
 19 instructed to accept the noticed fact. Fed. R. Evid. 201(f). An instruction regarding
 20 judicial notice should be given at the time notice is taken of any of the facts below,
 21 and should be to the following effect: “The Court has decided to accept as proved
 22 the fact that [state fact]. You must accept this fact as true.” *See Model Civil Jury*
 23 *Instructions for the District Courts of the Ninth Circuit* (2017 ed.) at 2.3 “Judicial
 24 Notice.” Plaintiffs also request the noticed documents be entered in evidence as
 25 exhibits.

26 True and correct copies of the documents for which Plaintiffs request judicial
 27 notice are attached.

28

1 On October 2, 2013, Perfect 10 filed a complaint in *Perfect 10, Inc. v.*
2 *Radvinksy et al.*, C.D. Cal. No. 2:13-cv-07279-SVW-E (“*Radvinsky*”) (Dkt. 1) for
3 copyright and trademark infringement, trademark dilution, and breach of contract.
4 That complaint is attached as **Exhibit 1**.

5 On November 22, 2013, defendants in *Radvinsky* filed an answer (Dkt. 12)
6 and counterclaims for attorneys’ fees and costs of suit. That answer is attached as
7 **Exhibit 2**.

8 On February 2, 2014, Perfect 10 filed a complaint in *Perfect 10, Inc. v. Ocom*
9 *B.V. et al.*, C.D. Cal. No. 2:14-cv-00808-JFW-VBK (“*Ocom*”) (Dkt. 1) for
10 copyright infringement. That complaint is attached as **Exhibit 3**.

11 On May 5, 2014, defendant in *Ocom* filed an answer to a First Amended
12 Complaint (Dkt. 35), seeking attorneys’ fees and costs under the Copyright Act.
13 That answer is attached as **Exhibit 4**.

14 On July 30, 2014, Perfect 10 filed a complaint in *Perfect 10, Inc. v. OVH*
15 *Groupe et al.*, C.D. Cal. No. 2:14-cv-05969-AB-SH (“*OVH*”) (Dkt. 1) for copyright
16 infringement. That complaint is attached as **Exhibit 5**.

17 On March 8, 2013 the Court entered an Order granting in part and denying in
18 part Giganews and Livewire’s motion to dismiss (Related Dkt. 97). That Order is
19 attached as **Exhibit 6**.

20 On July 10, 2013, the Court entered an order granting in party and denying in
21 part Giganews and Livewire’s motion to dismiss (Related Dkt. 129). That Order is
22 attached as **Exhibit 7**.

23 On January 29, 2014, the Court entered an Order denying Perfect 10’s
24 Motion for Summary Judgment (Related Dkt. 180). That Order is attached as
25 **Exhibit 8**.

26 On March 17, 2014, the Court entered an order granting Giganews’ Motion
27 to Compel Production of Documents (Related Dkt. 223). That Order is attached as
28 **Exhibit 9**.

1 On April 24, 2014, the Court entered an Order granting in substantial part
2 Giganews and Livewire's Motion to Compel Responses to Interrogatories and
3 Production of Documents (Related Dkt. 254). That Order is attached as **Exhibit 10**.

4 On June 5, 2014, the Court entered an Order granting in substantial part
5 Giganews and Livewire's Motion to Compel discovery responses (Related Dkt.
6 311). That Order is attached as **Exhibit 11**.

7 On June 5, 2014, the Court entered an Order granting Giganews and
8 Livewire's Motion to Compel Discovery Compliance from Third-Party Witnesses
9 (Related Dkt. 312). That Order is attached as **Exhibit 12**.

10 On June 23, 2014, the Court entered an Order granting in substantial part
11 Giganews' Motion to Compel Responses to Interrogatories (Related Dkt. 326).
12 That Order is attached as **Exhibit 13**.

13 On July 15, 2014, the Court entered an Order denying Perfect 10's Motion
14 for Sanctions (Related Dkt. 343). That Order is attached as **Exhibit 14**.

15 On October 31, 2014, the Court entered an Order granting Giganews and
16 Livewire's *Daubert* Motion to Exclude Expert Tygar (Related Dkt. 580). That
17 Order is attached as **Exhibit 15**.

18 On October 31, 2014, the Court entered an Order granting Giganews and
19 Livewire's *Daubert* Motion to Exclude Expert Waterman (Related Dkt. 581). That
20 Order is attached as **Exhibit 16**.

21 On October 31, 2014, the Court entered an Order granting Giganews and
22 Livewire's *Daubert* Motion to Exclude Expert Zada (Related Dkt. 582). That
23 Order is attached as **Exhibit 17**.

24 On November 14, 2014, the Court entered an Order granting Giganews and
25 Livewire's Motion for Partial Summary Judgment re Direct Copyright Infringement
26 and Denying as Moot Plaintiff's Motion for Partial Summary Judgment (Related
27 Dkt. 619). A copy of that Order is attached at **Exhibit 18**.

28 On November 14, 2014, the Court entered an Order granting Giganews and

1 Livewire's Motion for Partial Summary Judgment re Indirect Copyright
2 Infringement and Denying as Moot Plaintiff's Motion for Partial Summary
3 Judgment (Related Dkt. 620). That Order is attached as **Exhibit 19**.

4 On November 14, 2014, the Court entered an Order denying the parties'
5 remaining Motions for Partial Summary Judgment as Moot (Related Dkt. 621).
6 That Order is attached as **Exhibit 20**.

7 On March 3, 2015, the Court entered an Order denying Perfect 10's motion
8 for reconsideration of the Court's Orders granting Giganews and Livewire's
9 motions for summary judgment on indirect copyright infringement (Related Dkt.
10 682). That Order is attached as **Exhibit 21**.

11 On December 1, 2014, the Court entered Judgment in favor of Giganews and
12 Livewire (Related Dkt. 628). The Court's Judgment is attached as **Exhibit 22**.

13 On February 5, 2015, the Court entered Further Interim Findings re
14 Giganews and Livewire's Motion for Sanctions (Related Dkt. 676). That Order is
15 attached as **Exhibit 23**.

16 On March 24, 2015, the Court entered an Order granting Giganews and
17 Livewire's Motion for Attorneys' Fees and Costs (Related Dkt. 684). That Order is
18 attached as **Exhibit 24**.

19 On March 24, 2015, the Court entered an order that, "[i]n light of the Order
20 Granting Defendants' Motion for Attorneys' Fees and Costs, the Magistrate Judge
21 DENIES the Discovery Sanctions Motion. The Attorneys' Fees and Costs award
22 subsumes what is sought in the Sanctions Motion. The hearing date is vacated, as
23 is Docket #676" (Related Dkt. 685). That Order is attached as **Exhibit 25**.

24 On March 24, 2015, the Court entered an Amended Order granting Giganews
25 and Livewire's Motion for Attorneys' Fees and Costs (Related Dkt. 686). That
26 Order is attached as **Exhibit 26**.

27 On May 7, 2015, the Court entered an Order denying Giganews and
28 Livewire's Motion for Review of the Magistrate's Order Denying their Motion for

1 Discovery Sanctions (Related Dkt. 712). That Order is attached as **Exhibit 27**.

2 On January 23, 2017, the Ninth Circuit affirmed the Court's Orders on
 3 summary judgment and the grant of Giganews and Livewire's attorneys' fees
 4 (*Perfect 10, Inc. v. Giganews, Inc.*, No. 15-55500, Dkt. 110-1). The Circuit's
 5 opinion is attached as **Exhibit 28**.

6 On July 3, 2017, the Ninth Circuit entered an Order awarding attorneys' fees
 7 and non-taxable costs on appeal to Giganews and Livewire, and it referred to the
 8 Appellate Commissioner the determination of an appropriate amount of fees and
 9 costs (*Perfect 10, Inc. v. Giganews, Inc.*, No. 15-55500, Dkt. 144). That Order is
 10 attached as **Exhibit 29**. Giganews and Livewire applied for those fees for amounts
 11 they expended defending Perfect 10's appeal of the summary judgment order
 12 (Related Dkts. 619 & 620) and the Court's fee award (Related Dkt. 686).

13 On January 29, 2018, the Ninth Circuit entered an order granting Giganews
 14 and Livewire's supplemental motion for additional attorneys' fees and non-taxable
 15 costs (*Perfect 10, Inc. v. Giganews, Inc.*, No. 15-55500, Dkt. 153). That Order is
 16 attached as **Exhibit 30**.

17 On April 24, 2018, the Ninth Circuit entered an Order granting attorneys'
 18 fees and non-taxable costs on appeal in the amount of \$855,532.72 to Giganews
 19 and Livewire (*Perfect 10, Inc. v. Giganews, Inc.*, No. 15-55500, Dkt. 154). That
 20 Order is attached as **Exhibit 31**.

21 Dated: February 7, 2019

FENWICK & WEST LLP

24 By: /s/Todd Gregorian
 25 Todd Gregorian

26 Attorneys for Plaintiffs/Judgment Creditors,
 27 GIGANEWS, INC., and LIVEWIRE
 SERVICES, INC.